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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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1. Applicant's arguments filed October 1, 2009 have been fully considered but they are not persuasive. With respect to arguments regarding claim 1: Applicant argues that Lockwood does not disclose passageways formed in the wound dressing member between the port and the holes. Applicant is directed to Fig. 27 of Lockwood which is the embodiment cited against claim 1. The wound dressing member 222 is identical to the wound dressing member 22 referred to by applicant in terms of a series of passageways e.g. 30, 32 that terminate in holes 28. The passageways are thus formed in dressing member 222 and extend between the port 26 (or 23 in Fig. 27) and the holes 28. Applicant's statement regarding insert 219 including member 222 may be correct with respect to other embodiments but are not correct with respect to Fig. 27. Applicant also argues that the limitation "to engage healthy skin..." is not a functional limitation. Applicant cites the BPAI's holding in *Ex Parte Boudry* in support of the argument that examiner's statement that the wound dressing member is fully functional to engage healthy skin is not sufficient for a rejection under 35 U.S.C. 102. The case law is irrelevant because it pertains to a "configured to" limitation which is not functional language, whereas the "to engage healthy skin" limitation is, and the fact that the wound dressing member meets all of the structural limitations of claim 1 and is thus fully functional to engage healthy skin is sufficient for a rejection under 35 U.S.C. 102.
2. With respect to arguments regarding claim 12, as applicant; correctly cites, the tube 13 of Lockwood may be molded or attached to the wound dressing member. This disclosure encompasses an embodiment in which the wound dressing (thin flexible member) 222 is separate and spaced from the tube 13. As to the argument that

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Lockwood does not disclose bores through the body extending from one side surface to the other, this argument was previously addressed in the final Office action and it is clear from Figs. 4 and 5 of Lockwood that Lockwood discloses such passageways. As to the argument that Lockwood does not disclose a solid top surface and solid bottom surface, these limitations are interpreted in light of the specification. A body which has a single passageway through the body necessarily interrupts the continuous surface of the body at the top surface and bottom. Thus, as in the case of the Lockwood insert 219, the body necessarily has a solid top surface and solid bottom surface because the body is a cylinder which does not have a single passageway as claimed that would interrupt the continuous surfaces at the top and bottom, and those surfaces would therefore necessarily be solid. Applicant is also reminded that the limitations of a top and bottom solid surface and a single passageway are recited in alternative form, thus Lockwood need only disclose one of those limitations.

3. Applicant's arguments with regard to dependent claims 7, 11, 15, 28 and 29 have been fully considered but are not persuasive, as applicant's arguments depend entirely on arguments regarding the rejection of claims 1 and 13, which have been addressed *supra*. As to the additional argument that there would be no motivation to use the Gibertoni device with the Lockwood device, examiner disagrees that the Gibertoni device would interfere with the vacuum drainage. As in any absorbent article constructed so as to effect capillary fluid movement, such movement can occur with or without vacuum drainage and the magnitude of pressure and flow involved in capillary flow is too small to interfere in any way with vacuum drainage due to the large disparity in pressure differences in capillary versus vacuum-assisted flow.

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4. Applicant's arguments with regard to dependent claim 10 have been fully considered but are not persuasive, as applicant's arguments depend entirely on arguments regarding the rejection of claim 1, which have been addressed *supra*.

5. Applicant's arguments with regard to dependent claim 27 have been fully considered but are not persuasive, as applicant's arguments depend entirely on arguments regarding the rejection of claim 27, which have been addressed *supra*. As to additional arguments that using the Miner device with the Lockwood device would interfere with the function of the Miner device, the drain of Miner is a passive drain, therefore there would be no interference possible with the device of Lockwood because the Miner drain would still be passive, acting as a conduit for the vacuum flow.

6. As no new and persuasive arguments have been presented that overcome the outstanding claim rejections, the reply is not entered.